



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JPM:AP

*271 Cadman Plaza East
Brooklyn, New York 11201*

March 9, 2023

By Email and ECF

The Honorable Marcia M. Henry
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Amaury Guzmán
Criminal Docket No. 23-CR-107(MKB)

Dear Judge Henry:

The government submits this letter in advance of the defendant's renewed bail application on March 9, 2023 and supplements information supplied by the government in its detention memo filed on February 23, 2023. See ECF No. 5. On March 8, 2023, a grand jury returned an indictment charging the defendant with violations of Title 18, United States Code, Sections 2312 (interstate transport of a stolen motor vehicle), 2119 (carjacking) and 924(c) (brandishing a firearm during a crime of violence). See ECF No. 12. For the reasons stated below, the government requests that the defendant continue to be detained pending trial. The government respectfully submits that circumstances are unchanged and that the defendant remains a danger to the community and also constitutes a flight risk.

I. Background

A. The Order of Detention Entered on February 23, 2023

The defendant was charged by complaint with participating in a violent carjacking and brandishing a firearm during that crime of violence, which took place on November 22, 2022 in Queens, New York (the "November 22nd Carjacking"). See ECF No. 4. That carjacking involved the defendant and his co-conspirators using a Mercedes Benz sedan stolen two days before the carjacking from a residence in Carteret, New Jersey. Id. at ¶ 3. After carjacking the victim of his BMW SUV, the defendant and his cohorts fled in the Mercedes and in the BMW stolen from the victim. Id. at ¶ 2(d). As police pursued the stolen BMW, both vehicles soon collided into one another. Id. at ¶ 2(f),(g).

On February 23, 2023, the defendant was arrested on the complaint, and, following argument, the Honorable Cheryl L. Pollak, United States Magistrate Judge, entered an order of detention. In her bail determination, Judge Pollak specifically found the defendant to be a “serious risk of flight.” Specifically, she noted that the defendant has had multiple arrests since December 2020 and that he committed the instant offense while out on bail on a firearms-related indictment in Queens County.

Although Judge Pollak did not proceed to make a specific dangerousness finding, she noted that the conduct alleged in the complaint endangered the community and that “civilians could [have] be[en] injured” as evidenced by injury to one of the co-conspirators as a result of the collision following the carjacking. She also noted that multiple orders of protection were issued against the defendant thereby suggesting that “he does have anger management problems.”

B. Additional Evidence Linking the Defendant to the Charged Conduct

As outlined in the complaint, agents linked the defendant to a blue iPhone (the “Blue iPhone”) recovered from the driver’s side of the BMW carjacked from the victim at gunpoint. *Id.* at ¶¶ 4-13. Photos retrieved from the Blue iPhone, pursuant to a judicially authorized warrant, included a photo of the defendant’s own permanent residence card, among other items. *Id.* at ¶ 12. Additionally, cell site records for the defendant’s Blue iPhone placed the device at the location where the Mercedes was stolen in Carteret, New Jersey and also at the location of the carjacking on November 22, 2022. *Id.* at ¶¶ 14-15.

At the initial bail hearing on February 23, 2023, defense counsel argued that the evidence laid out in the complaint was more consistent with the Blue iPhone being lost or stolen and then subsequently recovered by someone else. However, a judicially authorized search of the defendant’s Instagram account (██████████)—linked to the Blue iPhone abandoned by the defendant after the carjacking—revealed direct references by the defendant to his involvement in the November 22nd Carjacking. In one particular communication on November 23, 2022, the defendant told another Instagram user, in sum and substance, that he was involved in a car crash and that one of his associates was in the hospital because of the collision. He added that he was in a different car at the time of the accident and that they crashed into one another. Most notably, the defendant stated that he was the only one who got away from the cops because he ran. This direct admission by the defendant conclusively ties him to the charged conduct.

C. The Defendant’s Additional Criminal Activity

The Pretrial Services Report dated February 23, 2023 noted that the defendant failed to appear in connection with an indicted matter on October 19, 2022 in Passaic County, New Jersey. Upon further investigation of that matter, the government has learned that on July 20, 2022, a grand jury sitting in Passaic County returned an indictment charging the defendant with Eluding in the Second Degree. In that case, the defendant was stopped in an Audi sedan by New Jersey law enforcement officers on May 31, 2021. As one of the officers approached the defendant’s car, the defendant put the car into gear and fled at a high rate of speed. The defendant and his companion subsequently crashed into a guard rail and fled on foot. Additional

officers and K9 units were later required to locate the defendant in a wooded area of West Milford, New Jersey. The defendant was released on a summons with a future court date and then failed to appear.

As detailed previously in a discussion of the defendant's criminal history, one of his prior convictions in 2021 also involved a vehicular collision and a police pursuit. In addition to the criminal conduct described above in New Jersey, as well the conduct alleged in the indictment, the defendant has a demonstrated history of fleeing police to evade apprehension and endangering members of the public in the process.

Aside from the defendant's criminal history, he is also a member of the Trinitarios, a violent street gang responsible for multiple acts of violence throughout New York City. Moreover, a recent judicially authorized search of a cell phone recovered from the defendant after his arrest revealed multiple photos of the defendant possessing and brandishing multiple guns. This evidence underscores the defendant's dangerous proclivity for firearms. In other words, not even a pending indictment charging the defendant with weapons possession was enough to deter him from accessing illegal guns.

The defendant's criminal conduct continued right up to the moment of his arrest on February 23, 2023. When agents took custody of the defendant near his home, he was driving a white 2016 Mercedes Benz sedan that had been reported stolen from a residence in Willingboro, New Jersey on January 12, 2023. The interstate theft of that vehicle is now under investigation by law enforcement.

II. Legal Standard

Under the Bail Reform Act, 18 U.S.C. §§ 3141, et seq. (the "Act"), federal courts are empowered to order a defendant's detention pending trial upon a determination that "no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community[.]" 18 U.S.C. § 3142(e). A finding of dangerousness must be supported by clear and convincing evidence. A finding of risk of flight must be supported by a preponderance of the evidence. See United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001).

In cases such as this, however, where there is probable cause to believe that the defendant has violated 18 U.S.C. § 924(c), there is a statutory presumption that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3142(e)(3)(B). Even if a defendant can overcome that presumption, the special risk of dangerousness posed by defendants who have committed such crimes "remains a factor to be considered among those weighed by the district court." Mercedes, 254 F.3d at 436.

If a defendant fails to overcome the statutory presumption or if the government meets its burden of establishing dangerousness or a risk of flight, detention is mandatory. See 18 U.S.C. § 3142(e)(1) (the court "shall order the detention of the person" if "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community").

The factors to be considered in determining whether the applicable standard has been met include: (1) the nature and circumstances of the crimes charged, (2) the history and characteristics of the defendant, (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g).

III. Argument

The defendant fails to overcome the statutory presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community. See 18 U.S.C. § 3142(e)(3)(B). The defendant offers no new or additional information for the Court to consider regarding the nature and circumstances of the crime, history and characteristics of the defendant, seriousness of the danger posed by the defendant's release; and/or the evidence of the defendant's guilt. The only change in circumstances is that a grand jury has now returned an indictment charging the defendant with multiple federal offenses including an offense that gives rise to a rebuttable presumption.

Given the factors discussed above, there are no conditions of release that could assure that the defendant does not pose a danger and/or would not flee. But even if such conditions were possible, the defendant's proposed bail package is simply inadequate. The defendant proposes a \$50,000 - \$100,000 unsecured bond comprised of three sureties one of whom, the defendant's mother, was already proposed by the defense at the first detention hearing.

Judge Pollak expressed reservation about the suitability of the defendant's mother as one of the primary suretors on the bond. She pointed to internal inconsistencies in the information provided by the defendant and his mother to Pretrial. For instance, the defendant denied having any mental health issues, but his mother reported that the defendant used to see [REDACTED]. Additionally, the defendant reported that he used [REDACTED] on a weekly basis, but his mother denied having any knowledge of a substance abuse issue. Judge Pollak noted that "as a potential suretor, it raises a lot of questions in my mind as to how much the mother knows about her son."

As the defendant makes no new arguments to overcome the statutory presumption, the government relies on its opposition to the defendant's first motion for bail and the above-described facts and circumstances of the case in requesting that the defendant's motion be denied.

IV. Conclusion

For the reasons set forth above, the government, therefore, respectfully requests that the Court deny the defendant's second motion for bond. The order of detention entered by Judge Pollak on February 23, 2023 should remain in effect because the defendant poses a danger

to the community and a risk of flight, and he has not presented any intervening material change in circumstances.

Respectfully submitted,

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cc: Clerk of Court (MMH)
Defense Counsel (via ECF and email)